

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION**

**UNITED STATES' UNOPOSED MOTION
FOR PRELIMINARY ORDER OF FORFEITURE**

TO THE HONORABLE ROBERT JUNELL, SENIOR UNITED STATES DISTRICT JUDGE:

NOW COMES Plaintiff United States of America, by and through the U. S. Attorney for the Western District of Texas, and submits this *Unopposed* Motion for Preliminary Order of Forfeiture pursuant to the provisions of 21 U.S.C. §§ 853(n)(1)-(7) and FED. R. CRIM. P. 32.2(b)(2). In support thereof, the United States respectfully offers the following:

I. STATEMENT OF THE CASE

On October 13, 2016, a two-count Indictment was returned against Defendant ANDREW MARION KOWALIK, charging him with violations of 18 U.S.C. § 2314 (*i.e.* Interstate Transportation of Stolen Goods) and 18 U.S.C. § 545 (*i.e.* Smuggling Goods into the United States). (Doc. 1). The Indictment also contained a Notice of Demand for Forfeiture. (Doc. 1 at 3-4).

On November 29, 2016, Defendant pled guilty to Count Two of the Indictment pursuant to a written plea agreement. (Docs. 17, 19). The written Plea Agreement memorializes Defendant's agreement to immediately and voluntarily forfeit all right, title, and interest in all items seized from him which include the following:

- Wooden Display case 1-PM-B containing 81 Mexican Prehistoric Archaeological Artifacts (arrowheads);

- Wooden Display case 2-PM-B containing 429 Mexican Prehistoric Archaeological Artifacts (arrowheads); and
- Wooden Display case 8-TS-A containing 9 Mexican Prehistoric Archaeological Artifacts (arrowheads)

(hereinafter referred to collectively as “Subject Properties”). (See Doc. 17 at 6).

The agreed Factual Basis entered into the record (Doc. 17 at 1-2) establishes that the Subject Properties are in violation of 18 U.S.C. § 545 and are subject to forfeiture pursuant to 18 U.S.C. § 982(a)(2)(B); 18 U.S.C. § 545 as made applicable to criminal forfeiture by 28 U.S.C. § 2461(c); and 19 U.S.C. § 1595a(c)(1)(A).

On December 19, 2016, the Court accepted Defendant’s guilty plea. (Doc. 20). Sentencing is set for February 13, 2017. (Doc. 23).

II. GROUNDS FOR MOTION

Federal Rule of Criminal Procedure 32.2(b)(2)(B) provides that, “[u]nless doing so is impractical, the court must enter the preliminary order sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant...” *Id.* Thus, the United States files the instant motion.

The United States hereby moves the Court to find that Defendant has an interest in the Subject Properties and that the United States has proven by a preponderance of the evidence the nexus between the Subject Properties and the violation of 18 U.S.C. § 545, by virtue of the Defendant’s guilty plea and the Factual Basis entered into the record. (Doc. 17). The agreed facts establish that the Subject Properties are subject to forfeiture to the United States pursuant to 18 U.S.C. § 982(a)(2)(B); 18 U.S.C. § 545 as made applicable to criminal forfeiture by 28 U.S.C. § 2461(c); and 19 U.S.C. § 1595a(c)(1)(A). Accordingly, the United States moves this Court for

entry of a Preliminary Order of Forfeiture which forfeits any and all right, title, and interest of Defendant ANDREW MARION KOWALIK in the Subject Properties.

The United States further moves the Court, pursuant to 21 U.S.C. § 853(g) and FED. R. CRIM. P. 32.2(b)(3), for an Order authorizing the United States through its lawfully designated agents and agencies, including the United States Marshals Service, to seize, take custody, control, and possession of the Subject Properties, whether held by Defendant or a third party.

The United States further moves the Court, pursuant to FED. R. CRIM. P. 32.2(b)(6)(A) and (C) and 21 U.S.C. § 853(n)(1), for an Order authorizing the United States to cause publication for at least 30 consecutive days on an official government internet website (www.forfeiture.gov) of notice of the Preliminary Order of Forfeiture and of its intent to dispose of the Subject Properties in such manner as the United States directs. The contents of the published notice will comply with FED. R. CRIM. P. 32.2(b)(6)(B).

Pursuant to FED. R. CRIM. P. 32.2(b)(6), the United States will also send direct notice of the Preliminary Order of Forfeiture to any person or entity who reasonably appears to the United States to be a potential petitioner with standing to contest the forfeiture in the ancillary proceedings. Thus, the United States will serve Appendix A¹ on potential petitioners along with the Preliminary Order of Forfeiture.

Pursuant to FED. R. CRIM. P. 32.2(c)(1)(B) and in an effort to promote judicial economy, the United States further moves the Court for an Order authorizing the United States to commence discovery proceedings at the time that any petitions are filed in order to resolve any third-party

¹ Appendix A, which is entitled “Direct Notice of Preliminary Order of Forfeiture,” sets forth the appropriate procedures, deadlines, and applicable statutes necessary to file a third-party petition.

issues, including depositions, interrogatories, requests for production of documents, and the issuance of subpoenas pursuant to Rule 45 of the Federal Rules of Civil Procedure.

Lastly, the United States moves the Court, pursuant to FED. R. CRIM. P. 32.2(b)(4)(B), to order that, at the time of the sentencing of Defendant ANDREW MARION KOWALIK, the forfeiture of the Subject Properties be included in his Judgment in a Criminal Case.

III. CERTIFICATE OF CONFERENCE

On February 9, 2017, the undersigned conferred with counsel for Defendant regarding the substance of the instant motion. Defendant is unopposed to the relief requested herein.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, the United States of America moves this Court for entry of the attached Preliminary Order of Forfeiture.

Respectfully submitted,

RICHARD L. DURBIN, JR.
UNITED STATES ATTORNEY

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ATTORNEYS FOR PLAINTIFF,
UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2017, a true and correct copy of the foregoing instrument was electronically filed with the Clerk of the Court using the CM/ECF System which will send notification of such to the following:

Terry G. Collins
Law Office of Terry G. Collins
PO Box 1988
Rockport, Texas 78381
(*Attorney for Defendant Andrew Marion Kowalik*)

By: */s/ Daniel M. Castillo*
DANIEL M. CASTILLO
Assistant United States Attorney

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION**

DIRECT NOTICE OF PRELIMINARY ORDER OF FORFEITURE

Notice is hereby given that, in the case of *U.S. v. ANDREW MARION KOWALIK*, Criminal No. P-16-CR-424 RAJ, the United States District Court for the Western District of Texas entered a Preliminary Order of Forfeiture condemning and forfeiting the following properties to the United States of America:

- Wooden Display case 1-PM-B containing 81 Mexican Prehistoric Archaeological Artifacts (arrowheads);
- Wooden Display case 2-PM-B containing 429 Mexican Prehistoric Archaeological Artifacts (arrowheads); and
- Wooden Display case 8-TS-A containing 9 Mexican Prehistoric Archaeological Artifacts (arrowheads).

The United States hereby gives notice of its intent to dispose of the forfeited properties in such manner as the United States Attorney General may direct. Any person, other than the named Defendant, asserting a legal interest in the subject properties, which have been ordered forfeited to the United States must file a petition within 30 days of the final publication of notice or his/her receipt of notice, whichever is earlier pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure and 21 U.S.C. §§ 853(n)(1)-(3). The petition must be filed with the Clerk of the Court, 410 South Cedar, Pecos, Texas 79772, and a copy served upon the United States Attorney's Office, Daniel M. Castillo, Assistant United States Attorney, 816 Congress Avenue, Suite 1000, Austin, Texas 78701.

The petition must comply with the requirements 21 U.S.C. § 853(n).

If you fail to file a petition to assert your interest in the above-described properties within the time prescribed above, your interest in the properties will be lost and forfeited to the United States, which will then have clear title to the properties and will dispose of the properties in accordance with the law.

APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
PECOS DIVISION

UNITED STATES OF AMERICA, §
Plaintiff, §
§
v. § **Criminal No. P-16-CR-424 RAJ**
§
ANDREW MARION KOWALIK, §
Defendant. §

PRELIMINARY ORDER OF FORFEITURE

Came on to be considered the **United States' Unopposed Motion for Preliminary Order of Forfeiture**, pursuant to the provisions of 21 U.S.C. §§ 853(n)(1)-(7) and FED. R. CRIM. P. 32.2(b)(2), and this Court being fully and wholly apprised in all its premises, finds that the United States has established by a preponderance of evidence a nexus between the below-described properties and the violation of 18 U.S.C. § 545 and that Defendant ANDREW MARION KOWALIK has an interest in the below-described properties. Said Motion is meritorious and should be, and hereby is, in all things GRANTED; IT IS THEREFORE

ORDERED that all right, title, and interest of Defendant ANDREW MARION KOWALIK, in the following:

- Wooden Display case 1-PM-B containing 81 Mexican Prehistoric Archaeological Artifacts (arrowheads);
- Wooden Display case 2-PM-B containing 429 Mexican Prehistoric Archaeological Artifacts (arrowheads); and
- Wooden Display case 8-TS-A containing 9 Mexican Prehistoric Archaeological Artifacts (arrowheads)

(hereinafter referred to collectively as "Subject Properties") be, and hereby are FORFEITED to the United States; and IT IS FURTHER

ORDERED that upon entry of the Preliminary Order of Forfeiture, the United States through its lawfully designated agents and agencies, including the United States Marshals Service,

shall seize, take custody, control, and possession of the Subject Properties whether held by Defendant ANDREW MARION KOWALIK, or a third party; and IT IS FURTHER

ORDERED that the United States shall cause publication for at least 30 consecutive days on an official government internet website (www.forfeiture.gov) of notice of the Preliminary Order of Forfeiture and of its intent to dispose of the Subject Properties in such manner as the United States directs. The United States must send notice to any person or entity who reasonably appears to be a potential petitioner with standing to contest the forfeiture in the ancillary proceeding; and IT IS FURTHER

ORDERED that the United States shall send Direct Notice of the Preliminary Order of Forfeiture, Appendix A, which is attached to the United States of America's Motion for Preliminary Order of Forfeiture, and incorporated herein to those known to the United States to have an interest in the Subject Properties; and IT IS FURTHER

ORDERED that in the event a third-party petition is filed as to the Subject Properties, the United States shall commence discovery proceedings to resolve any third-party issues, including depositions, interrogatories, requests for production of documents, and the issuance of subpoenas pursuant to Rule 45 of the Federal Rules of Civil Procedure; and IT IS FURTHER

ORDERED that at the time of the sentencing of Defendant ANDREW MARION KOWLIK, the forfeiture of the Subject Properties shall be included in his Judgment in a Criminal Case.

IT IS SO ORDERED.

SIGNED this _____ day of _____, 2017.

**ROBERT JUNELL
SENIOR U.S. DISTRICT JUDGE**